

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 1877 – HB 2143

April 9, 2018

SUMMARY OF ORIGINAL BILL: Requires audits performed by the Comptroller of the Treasury (COT) on county and municipal law enforcement agencies and judicial district drug task forces to include how proceeds derived from forfeited assets are used. Requires the Department of Safety and Homeland Security (DOS) to report COT audit results to the General Assembly and to publish results of COT audits on the DOS website.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – \$3,600/Comptroller of the Treasury

Increase Local Expenditures – \$59,400*

SUMMARY OF AMENDMENTS (015702, 016751): Amendment 015702 deletes all language after the enacting clause such that the only substantive change is to remove the requirement of municipal law enforcement agency audits to include how proceeds derived from forfeited assets are used.

Amendment 016751 adds language to amendment 015702 to prohibit a state or local law enforcement agency, including a judicial district drug task force, from referring, transferring, or otherwise relinquishing possession of property seized or proceeds from such property forfeited under state law to a federal agency unless the aggregate net equity value of the property and currency seized or forfeited in a case exceeds \$100,000, excluding the value of contraband.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

Increase State Revenue – \$353,600/State Law Enforcement Agencies

Increase State Expenditures – \$3,600/Comptroller of the Treasury
Exceeds \$25,000/State Law Enforcement Agencies

Increase Local Revenue – \$1,414,400

Increase Local Expenditures – Exceeds \$100,000*

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Assumptions relative to Local Government Audits:

- Based on information provided by the DOS, any impact to the department resulting from reporting COT audit information to the General Assembly or publishing COT audit information on the departmental website is estimated to be not significant.
- Based on information provided by the COT, county sheriff department and judicial district drug force audits include a review of forfeited asset proceeds; however, the funds are not tracked by expenditure of seizure dollars. Tracking expenditures by individual seizure will lead to additional travel expenses.
- Based on information provided by the COT, COT staff conducts 90 county sheriff and 31 judicial district drug task force audits each year.
- Additional COT audit requirements will be achieved utilizing existing staff.
- The increase in travel expenditures will vary for each audit and is dependent on the location, the distance traveled, and the additional time required to complete such audits; however, it is estimated to increase travel expenditures on average by \$30 per audit.
- The recurring increase in state expenditures to the COT is estimated to be \$3,630 [(90 + 31) audits x \$30 travel].

Assumptions relative to Civil Forfeiture and the Equitable Sharing Program:

- Civil forfeiture is a legal process in which law enforcement agencies seize assets suspected of being involved in criminal or illegal activity. Civil forfeiture may be initiated even if the property owner has not been charged with any criminal or illegal activity.
- Civil forfeiture actions are in rem, i.e., they are actions brought against property or a property interest and not against an individual. *Stuart v. State Dept. of Safety*, 963 S.W.2d 28, 34 (Tenn. 1998).
- Under current procedure, a law enforcement agency may seize property for which probable cause exists that the property was used or involved in criminal or illegal activity. The law enforcement agency files a civil forfeiture action. The property owner then has the burden to prove that the property was not involved in the commission of the offense.
- When the law enforcement agency is a state entity, e.g., the Tennessee Bureau of Investigation (TBI), the Department of Safety, and the Tennessee Alcoholic Beverage Commission (ABC), the forfeiture action is filed with the Secretary of State's Division of Administrative Procedures (Administrative Procedures).
- A law enforcement agency may alternately transfer the property to the federal government, which may institute forfeiture proceedings under the federal procedures. The monies from these federal proceedings are deposited into the Assets Forfeiture Fund of the Department of Justice (DOJ) established by the Comprehensive Crime Control Act of 1984, 98 Stat. 1837 (1984). These funds are distributed to state and local law

enforcement agencies by the Attorney General (21 U.S.C. § 881(e)(1)(A) and (e)(3), 18 U.S.C. § 981(e)(2), and 19 U.S.C. § 1616a) through the Equitable Sharing Program.

- The intent of the federal program is to assure that the property transferred to a state or local law enforcement agency has a value that bears a reasonable relationship to the degree of direct participation of the state or local agency and to “encourage further cooperation between the recipient state or local agency and Federal law enforcement agencies”. 21 U.S.C. § 881(e)(3); *see* Department of Justice, Criminal Division, *Guide to Equitable Sharing for State and Local Law Enforcement Agencies* 1 (2009).
- Local or state law enforcement agencies will continue to seize property, regardless of the net equity value of such property.
- Processing of seized assets will lead to a recurring increase in state expenditures associated with the handling and processing of seized materials estimated to exceed \$25,000 for state law enforcement agencies.
- Processing of seized assets will lead to a mandatory recurring increase in local expenditures estimated to exceed \$100,000 statewide.
- The average annual net deposit over the last three fiscal years from Tennessee state and local law enforcement agencies to the Asset Forfeiture Fund is \$9,714,554.
- Approximately 70 percent of all deposits to the Asset Forfeiture Fund, or \$6,800,188 (\$9,714,554 x 70%), is reasonably estimated to result from property forfeited under state law.
- Approximately 50 percent, or \$3,400,094 (\$6,800,188 x 50%), of the aggregate net equity of property forfeited under state law exceeds the proposed \$100,000 threshold; therefore, the remaining \$3,400,094 would be impacted by this legislation and be prohibited from transfer to a federal agency.
- Approximately 80 percent, or \$2,720,075 (\$3,400,094 x 80%), of the funds remitted to the Asset Forfeiture Fund is estimated to be from local agencies and 20 percent, or \$680,019 (\$3,400,094 x 20%), is estimated to be from state law enforcement agencies, including the Alcohol Beverage Commission, the Tennessee Bureau of Investigation, the Department of Safety, the National Guard Counter Drug Task Force, and other state task forces.
- On average, approximately 52 percent of such revenue is referred, transferred, or relinquished to federal agencies while 48 percent is distributed to state and local law enforcement.
- Prohibiting state and local law enforcement agencies from referring, transferring, or otherwise relinquishing possession of property seized or proceeds from such property will result in a mandatory recurring increase in local revenue estimated to be \$1,414,439 [\$2,720,075 x 52%] and a recurring increase in state revenue to various state law enforcement agencies estimated to be \$353,610 [\$680,019 x 52%].

*Article II, Section 24 of the Tennessee Constitution provides that: *no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in dark ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

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